

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT A.,

Plaintiff,

1

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 3:21-cv-05393-JRC

ORDER ON PLAINTIFF'S COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local

Magistrate Judge Rule MJR 13. *See also* Consent to Proceed Before a United States Magistrate Judge, Dkt. 2. This matter has been fully briefed. *See* Dkts. 16, 23, 24.

Plaintiff, who alleges that he is disabled due to physical and mental impairments, including depression, anxiety, and personality disorder, challenges the Administrative Law Judge’s (“ALJ”) evaluation of two opinions from examining psychologist, Dr. Wheeler. Plaintiff requests that the Court remand this case for an award of benefits.

The Court concludes that the ALJ erred in evaluating Dr. Wheeler's opinions that plaintiff would have a number of work-related limitations, including that he would be markedly limited in his abilities to maintain work attendance and to complete a normal workday and workweek without interruption from his symptoms. In rejecting these opinions, the ALJ overlooked Dr. Wheeler's objective clinical findings supporting her opinions and erroneously concluded that Dr. Wheeler relied on plaintiff's subjective complaints in finding that plaintiff has significant work-related limitations. The ALJ further erred by finding—without explanation—that plaintiff's daily activities are inconsistent with Dr. Wheeler's opined limitations, despite that Dr. Wheeler was aware of and considered the same activities in rendering her opinions.

The ALJ's errors were not harmless, and crediting Dr. Wheeler's opinions as true, the ALJ would be required to find plaintiff disabled on remand. Therefore, remanding this case for the ALJ to reevaluate the evidence would serve no useful purpose. Accordingly, remand for award of benefits is the appropriate remedy.

PROCEDURAL HISTORY

Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant to 42 U.S.C. § 1382(a) (Title XVI) of the Social Security Act was denied initially and following reconsideration. *See* AR 64. Plaintiff's requested hearing was held before ALJ Lawrence Lee on August 4, 2020. *See* AR 64. On September 23, 2020, the ALJ issued a written decision in which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security Act. *See* AR 64-82.

On April 8, 2021, the Appeals Council denied plaintiff's request for review, making the written decision by the ALJ the final agency decision subject to judicial review. AR 1; *see* 20 C.F.R. § 404.981. Plaintiff filed a complaint in this Court seeking judicial review of the ALJ's

1 written decision in May 2021. *See* Dkts. 1, 5. Defendant filed the sealed administrative record
 2 (“AR”) regarding this matter on October 5, 2021. *See* Dkt. 14.

3 **BACKGROUND**

4 Plaintiff, Scott A., was born in 1980 and was 38 years old on the alleged date of disability
 5 onset of July 12, 2018. *See* AR 64, 80. Plaintiff obtained his GED, and his prior work history
 6 includes work as a restaurant waiter and busser. *See* AR 94, 99. Plaintiff states that he stopped
 7 working due to his conditions. *See* AR 309.

8 According to the ALJ, plaintiff has at least the severe impairments of congestive heart
 9 failure, depression, anxiety, personality disorder, cannabis abuse, and history of alcohol and
 10 methamphetamine abuse in sustained full remission. AR 66.

11 **STANDARD OF REVIEW**

12 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of
 13 social security benefits if the ALJ’s findings are based on legal error or not supported by
 14 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
 15 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

16 **DISCUSSION**

17 Plaintiff argues that the ALJ erred in evaluating the medical opinions of an examining
 18 psychologist, Dr. Wheeler. *See* Dkt. 16, at 5–12. Finding this issue dispositive, the Court
 19 declines to address plaintiff’s remaining arguments.

20 **I. Evaluation of Medical Opinion Evidence**

21 **A. Medical Opinion Standard of Review**

22 For cases filed on or after March 27, 2017, the Administration has directed ALJs that
 23 they are no longer to defer to medical opinions from treating or examining sources (*see* 20

1 C.F.R. §§ 404.1527(c)), instead evaluating the persuasiveness of medical opinions by analyzing
 2 their “supportability” and “consistency,” as well as other appropriate factors. 20 C.F.R. §
 3 404.1520c(a).

4 As this Court has previously concluded, the post-March 2017 regulations supplant
 5 judicial precedent regarding the weight given to controverted examining and treating medical
 6 opinions, to the extent that there is any conflict. *See* Dkt. 20, *Mooney v. Comm'r of Soc. Sec.*,
 7 3:19-cv-05103-RBL-JRC (W.D. Wash. Feb 14, 2020) (report and recommendation adopted
 8 March 9, 2020); Dkt. 15, *Martinson v. Comm'r of Soc. Sec.*, 3:20-cv-05149-JRC (W.D. Wash.
 9 August 25, 2020).

10 The parties do not challenge that the revised regulations apply. *See* Dkts. 16, at 8; 23, at
 11 4. Based on the analysis above, the Court reviews solely whether the ALJ’s decision is
 12 supported by substantial evidence and is free from legal error. *See Lambert v. Saul*, 980 F.3d
 13 1266, 1277 (9th Cir. 2020). That is, the ALJ “must provide sufficient reasoning that allows us to
 14 perform our own review, because the grounds upon which an administrative order must be
 15 judged are those upon which the record discloses that its action was based.” *Id.* (internal
 16 citations and quotations omitted).

17 **B. Dr. Wheeler’s 2019 and 2020 Opinions**

18 Kimberly Wheeler, Ph.D. examined and evaluated plaintiff on two occasions: in March
 19 2019 and May 2020. *See* AR 1251–55, 1616–20. Dr. Wheeler’s March 2019 examination
 20 consisted of a clinical interview, mental status examination (“MSE”), and review of plaintiff’s
 21 health records, including treatment records and a prior psychological evaluation from 2015. AR
 22 1251–55. Based on her examination, Dr. Wheeler diagnosed plaintiff with major depressive
 23 disorder, social anxiety with some generalized anxiety disorder elements, methamphetamine use
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1 disorder in sustained full remission, and alcohol use disorder in sustained full remission. AR
2 1252. Dr. Wheeler opined that plaintiff would have a number of mild to marked limitations on
3 his abilities to perform work activities, including that plaintiff would be markedly limited in his
4 abilities to maintain regular attendance and be punctual within customary tolerances and to
5 complete a normal workday and workweek without interruptions from his symptoms. *See* AR
6 1253.

7 In May 2020, Dr. Wheeler examined plaintiff a second time. *See* AR 1616–20. Dr.
8 Wheeler’s second examination consisted of a clinical interview, MSE, review of Washington
9 State Department of Social and Health Services (“DSHS”) case notes, and review of Dr.
10 Wheeler’s March 2019 evaluation. *See id.* Based on her second evaluation, Dr. Wheeler
11 diagnosed plaintiff other specified personality disorder (mixed avoidant, dependent traits), social
12 anxiety with generalized anxiety disorder elements, unspecified depressive disorder, alcohol use
13 disorder in sustained remission, and methamphetamine use disorder in sustained remission. AR
14 1618. Dr. Wheeler again opined that plaintiff would have a number of mild to marked functional
15 limitations, with an overall severity rating of “marked” based on the combined impact of all
16 diagnosed mental impairments. *See id.*

17 Addressing both opinions together, the ALJ found that Dr. Wheeler’s opinions were “not
18 persuasive” because (1) they are inconsistent with the overall medical evidence of record; (2) Dr.
19 Wheeler relied on plaintiff’s subjective complaints in assessing his functioning; (3) the opinions
20 are inconsistent with plaintiff’s daily activities; (4) the opinions are inconsistent with plaintiff’s
21 minimal treatment history and his conditions are “stable” on a medication regimen; (5) the
22 opinions are not consistent with plaintiff’s performance during MSEs; and (6) Dr. Wheeler failed
23 to consider the effects of plaintiff’s marijuana use on his motivation and functioning. AR 78–79.

1 With respect to the first reason, the ALJ concluded—without explanation—that Dr.
 2 Wheeler’s opinions are inconsistent with the overall medical evidence of record. AR 79.
 3 “Consistency” with the record as a whole is an important factor that an ALJ must consider when
 4 evaluating a medical opinion. 20 C.F.R. § 416.920c(b)(2), (c)(2). However, the ALJ must
 5 “explain” how he considered “consistency” in evaluating a medical opinion. *Id.* at §
 6 416.920c(b)(2). The ALJ’s failure to explain how Dr. Wheeler’s opinions are inconsistent with
 7 the overall medical evidence of record runs afoul of 20 C.F.R. § 416.920c and is error. *See id.*;
 8 *see also Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the ALJ to build an
 9 accurate and logical bridge from the evidence to her conclusions so that we may afford the
 10 claimant meaningful review of the SSA’s ultimate findings.”).

11 Next, the ALJ found that Dr. Wheeler “primarily relied” on plaintiff’s subjective
 12 complaints in assessing the opined limitations, implying that Dr. Wheeler’s opinions are not
 13 supported by objective medical evidence. AR 79. As with consistency, “supportability” is an
 14 important factor in evaluating a medical opinion, and an ALJ must “articulate” how he
 15 considered this factor in his written decision. 20 C.F.R. § 416.920c(a), (b)(2).

16 However, in this case, the ALJ appears to have overlooked objective evidence supporting
 17 Dr. Wheeler’s opinions. For example, during plaintiff’s 2019 MSE, Dr. Wheeler observed that
 18 plaintiff’s mood was anxious, his affect blunted, and that his concentration was not within
 19 normal limits. *See* AR 1254–55 (also noting diffuse, vague and deflective speech; low energy
 20 and misunderstanding of questions asked). Likewise, during the 2020 MSE, Dr. Wheeler
 21 observed that plaintiff’s mood was “blah, bland,” his affect blunted, and that his memory,
 22 concentration, and judgment and insight were not within normal limits. AR 1619–20 (also
 23 noting plaintiff’s low energy, marginally cooperative attitude, and distraction during the

1 examination). These objective findings tend to support Dr. Wheeler's opinions that plaintiff has
2 mood and functional symptoms that would limit his abilities to perform work activities. *See*
3 Paula T. Trzepacz and Robert W. Baker, *The Psychiatric Mental Status Examination 4* (Oxford
4 University Press 1993) ("Like the physical examination, the Mental Status Examination is
5 termed the *objective* portion of the patient evaluation."). Thus, the ALJ's conclusion that Dr.
6 Wheeler primarily relied on plaintiff's subjective complaints in rendering her opinions, and that
7 the opinions are not supported by objective evidence, is not supported by substantial evidence.
8 *See Lambert*, 980 F.3d at 1277; *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014)
9 ("[W]hen an opinion is not more heavily based on a patient's self-reports than on clinical
10 observations, there is no evidentiary basis for rejecting the opinion.").

11 Regarding the ALJ's third reason, the ALJ also found Dr. Wheeler's opinions
12 unpersuasive because they are inconsistent with plaintiff's reported activities. AR 79. Here, the
13 ALJ identified plaintiff's ability to prepare meals, perform household chores, use public
14 transportation, shop independently, and watch YouTube videos as evidence suggesting that
15 plaintiff's functioning is not as limited as alleged. *See id.* However, Dr. Wheeler was aware that
16 plaintiff was capable of such activities, and she nonetheless opined that plaintiff would be
17 limited in his abilities to carry out work activities. *See* AR 1252, 1617 (noting daily activities of
18 watching TV/YouTube, ability to shop for himself, do some house chores and spend time
19 socializing with family and friends). Without additional explanation, it is not clear to the Court
20 how the cited daily activities are inconsistent with plaintiff's reported activities or with Dr.
21 Wheeler's opined limitations. *See* 20 C.F.R. § 916.920c(b)(2) (An ALJ is required to explain
22 how he considered consistency of a medical opinion with other evidence of record); *see also*

1 | *Blakes*, 331 F.3d at 569. Therefore, the ALJ’s conclusion that plaintiff’s reported daily activities
 2 | are inconsistent with Dr. Wheeler’s opinions is not supported by substantial evidence.

3 | Next, the ALJ found—without explanation—that Dr. Wheeler’s opinions are inconsistent
 4 | with plaintiff’s minimal treatment history, as well as evidence showing that plaintiff’s conditions
 5 | are “stable on only his medication regimen.” AR 79. As noted above, the ALJ may find that a
 6 | medical opinion’s inconsistency with the medical evidence of record renders that opinion less
 7 | persuasive. *See* C.F.R. § 920c(c)(2). However, the ALJ must explain any such inconsistencies.
 8 | *See id.* at § 920c(a), (b)(2). Again, the ALJ failed to explain how plaintiff’s lack of medical
 9 | treatment and stability on medication are inconsistent with Dr. Wheeler’s opinion. *See* 20 C.F.R.
 10 | 920c(a), (b)(2) (requiring explanation of inconsistencies); *see also* *Lambert*, 980 F.3d at 1277
 11 | (the ALJ must provide sufficient reasoning for his findings).

12 | Further, Dr. Wheeler noted that plaintiff’s treatment history was minimal and that he was
 13 | taking medication for his anxiety. *See* AR 1251 (also noting that plaintiff was previously placed
 14 | on a psychiatric hold when he became irrational and wanted to leave a hospital during cardiac
 15 | treatment), AR 1616 (also noting that plaintiff was evaluated another time when his mother
 16 | became worried and called the authorities). Dr. Wheeler further addressed plaintiff’s lack of
 17 | treatment, noting that he would need a “seasoned therapist” to address plaintiff’s “avoidant” and
 18 | “dependent” behavior and symptoms. AR 1253, 1616. Taking these factors into consideration,
 19 | Dr. Wheeler opined that plaintiff would still have significant work-related limitations. *See* AR
 20 | 1618; *see also* *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (“[T]he fact that claimant
 21 | may be one of millions of people who did not seek treatment for a mental disorder until late in
 22 | the day is not a substantial basis on which to conclude that [a physician’s] assessment of
 23 | claimant’s condition is inaccurate.”).

1 Additionally, the record does not support the ALJ’s characterization of plaintiff as being
 2 “stable on only his medication regimen.” AR 79. Rather, it appears that although plaintiff
 3 remained on the same medication, he nonetheless continued to complain of increased depression,
 4 fatigue, and medication side effects and to display mood, affect and other symptoms. *See* AR
 5 1040–1041, 1064–65, 1130–31, 1150, 1511–1514, 1516–1520; *see also Ghanim v. Colvin*, 763
 6 F.3d 1154, 1164 (9th Cir. 2014) (finding error where the ALJ improperly “cherry-picked”
 7 aspects of the record that support the ALJ’s decision, while failing to develop the record on
 8 aspects of the record that support a finding of disabling limitations). Thus, without further
 9 explanation, it is unclear to the Court how plaintiff’s lack of treatment and continued medication
 10 regimen are inconsistent with Dr. Wheeler’s opinions. *See* 20 C.F.R. § 404.927c(a), (b)(2);
 11 *Blakes*, 31 F.3d at 569. Accordingly, the ALJ’s conclusions are not supported by substantial
 12 evidence.

13 As for the ALJ’s fifth reason, the ALJ concluded that Dr. Wheeler’s opinions are
 14 inconsistent with plaintiff performance during Dr. Wheeler’s MSEs, which “only show some
 15 deficits in mental functioning.” AR 79. As discussed above, Dr. Wheeler observed a number of
 16 abnormalities displayed by plaintiff during MSEs, including that plaintiff’s mood was anxious,
 17 his affect was blunted, and his concentration and memory were not within normal limits. *See* AR
 18 1254–55, 1619–20. Again, these findings tend to support to support Dr. Wheeler’s opinions that
 19 plaintiff has mood and functional symptoms that would limit his abilities to perform work
 20 activities. Thus, by characterizing plaintiff’s MSE performance as showing “only some deficits
 21 in mental functioning” (AR 79), the ALJ appears to have overlooked portions of MSEs and
 22 improperly substituted his own judgment for that of Dr. Wheeler’s observations. *See Reddick v.*
 23 *Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (When an ALJ seeks to discredit a medical opinion, he

1 must explain why his own interpretations, rather than those of the doctor, are correct.); *see also*
 2 *Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (“[J]udges, including administrative law
 3 judges of the Social Security Administration, must be careful not to succumb to the temptation to
 4 play doctor. [. . .] Common sense can mislead; lay intuitions about medical phenomena are often
 5 wrong.”) (internal citations omitted).

6 Finally, the ALJ found that Dr. Wheeler “failed to examine the effects of plaintiff’s
 7 chronic marijuana use on his motivation and functioning.” AR 79. The ALJ did not explain how
 8 such a finding would undermine Dr. Wheeler’s opinions, as he was required to do. *See* 20
 9 C.F.R. § 920c(a), (b)(2). Even so, substantial evidence does not support the ALJ’s finding.
 10 During the 2019 examination, Dr. Wheeler was aware of plaintiff’s daily marijuana use, and she
 11 found that even if plaintiff were sober, the effects of his mental impairments would still impact
 12 basic work activities. *See* AR 1251, 1253. Similarly, during the 2020 examination, Dr. Wheeler
 13 noted that plaintiff had stopped using marijuana and that plaintiff would still be limited in
 14 performing basic work activities. *See* AR 1617–18. Thus, it appears that Dr. Wheeler did
 15 consider plaintiff’s marijuana use and its impact on plaintiff’s functioning. To the extent that the
 16 ALJ concluded that Dr. Wheeler’s opinions are inconsistent with or not supported due to
 17 plaintiff’s marijuana use, he failed to specify or explain any such conflict. *See* AR 79; 20 C.F.R.
 18 § 404.920c(a), (b)(2); *Lambert*, 980 F.3d at 1277.

19 In sum, the ALJ’s evaluation of Dr. Wheeler’s opinions was not supported by substantial
 20 evidence. The Court further finds that the ALJ’s error was not harmless. Had the ALJ fully
 21 credited Dr. Wheeler’s opinions regarding plaintiff’s mental limitations, the residual functional
 22 capacity (“RFC”) would have included greater limitations. *See* *Marsh v. Colvin*, 792 F.3d 1170,
 23 1173 (9th Cir. 2015) (quoting *Stout v. Comm’r*, 454 F.3d 1050, 1055–56 (9th Cir. 2006)) (“a
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1 reviewing court cannot consider [an] error harmless unless it can confidently conclude that no
 2 reasonable ALJ, when fully crediting the testimony, could have reached a different disability
 3 determination.””).

4 **II. Remaining Issues**

5 Plaintiff also argues that the ALJ improperly considered plaintiff’s drug and alcohol use
 6 in discrediting plaintiff’s subjective complaints. Dkt. 16, at 12. Additionally, plaintiff argues
 7 that the ALJ’s decision was constitutionally defective because of the unconstitutional
 8 appointment and removal of the Commissioner of Social Security. *See id.* at 13–20. Because the
 9 case may be resolved without considering plaintiff’s remaining arguments, the Court declines to
 10 address these issues.

11 **III. Remand for Award of Benefits**

12 Plaintiff asks the Court to remand this case for an award of benefits. *See* Dkt. 16, at 21.
 13 A remand for an award of benefits is appropriate “where ‘(1) the record has been fully developed
 14 and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to
 15 provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical
 16 opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be
 17 required to find the claimant disabled on remand.’’’ *Trevizo v. Berryhill*, 871 F.3d 664, 682–83
 18 (9th Cir. 2017) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1021 (9th Cir. 2014)). But “[w]here
 19 there is conflicting evidence, and not all essential factual issues have been resolved, a remand for
 20 an award of benefits is inappropriate.” *See Treichler v. Cmm’r*, 775 F.3d 1090, 1101 (9th Cir.
 21 2014).

22 Here, the record is well-developed regarding plaintiff’s mental limitations, the focus of
 23 Dr. Wheeler’s opinions. Considering Dr. Wheeler’s examining relationship with plaintiff and
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1 the overall evidence of record supporting Dr. Wheeler's opinions, any further administrative
2 proceedings would not be helpful in reevaluating any inconsistencies in the state agency
3 reviewing doctors' opinions, where only a limited number of plaintiff's medical records were
4 reviewed. *See* AR 149–50, 171–73; *see also* 20 C.F.R. § 920c(c)(3)(v) ("A medical source may
5 have a better understanding of your impairment(s) if he or she examines you than if the medical
6 source only reviews evidence in your folder."). Further, every other examining or reviewing
7 doctor of record opined that plaintiff would be at least markedly limited in his abilities to
8 perform activities within a schedule and maintain regular attendance within customary
9 tolerances; to maintain appropriate behavior in a work setting; and to complete a normal
10 workday and workweek without interruptions from symptoms. *See* AR 1129–32, 1208–12,
11 1217–26, 1232–39, 1243–48, 1256–57; *but see* AR 1145–51 (examining opinion regarding
12 diagnoses but giving no functional assessment).

13 If Dr. Wheeler's opinions were credited as true, particularly her opinion that plaintiff is
14 markedly limited in his abilities to maintain regular attendance and to complete a normal
15 workday and workweek without interruptions from symptoms, the ALJ would be required to find
16 plaintiff disabled on remand. *See* AR 1253, 1618; *Revels v. Berryhill*, 874 F.3d 648, 665 (9th
17 Cir. 2017) (citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1041 n. 12 (9th Cir. 2007)) ("Because
18 the [vocational expert] testified that a [plaintiff] with the physical limitations outlined in [a
19 treating doctor]'s medical opinion would be unable to do any full-time work, the [treating
20 doctor]'s medical opinion *alone* establishes that [the plaintiff] is entitled to benefits.").

21 The ALJ and plaintiff's attorney questioned the vocational expert ("VE") at the hearing
22 regarding whether plaintiff would be competitively employable if he was absent from work more
23 than one day per month or was off task more than 10% in a workday. *See* AR 109–12. In each
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1 instance, the VE testified that a person with these limitations would not be able to maintain
2 competitive employment. *See id.* Therefore, crediting Dr. Wheeler's opinions as true, there is
3 no serious question regarding plaintiff's lack of employability, and remand for an award of
4 benefits is the appropriate remedy.

5 **CONCLUSION**

6 Based on these reasons and the relevant record, the Court **ORDERS** that this matter be
7 **REVERSED** and **REMANDED** for an award of benefits.

8 **JUDGMENT** should be for **PLAINTIFF** and the case should be closed.

9 Dated this 18th day of January, 2022.

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11 J. Richard Creatura
12 Chief United States Magistrate Judge

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